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April 11, 2025

Magistrate Judge James R. Cho
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York
11201

Re: *Alexander et al. v. Sutton et al.* 24-cv-2224 (DG)(JRC)
Request for Additional Time to Complete Discovery

Dear Judge Cho:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York. I represent the New York City Department of Education ("DOE"), DOE Chancellor David C. Banks, DOE Equity Compliance Officer Nina Mickens (collectively, "DOE Defendants"), and the Community Education Council ("CEC") for Community School District 14 ("CEC 14") and Tajh Sutton and Marissa Manzanares in their official capacities only (collectively "City Defendants") in the above-referenced matter. I write to respectfully request until May 30, 2025 to produce documents for Discovery in this matter. This is the City Defendants' second request that the Court grant an extension of time to produce documents. I also write to request a Court-ordered claw back agreement in case of production of privileged materials.

There are a number of reasons document production is taking longer than City Defendants originally anticipated. This Office first believed we could review the documents in-house, but, following negotiating search terms, an initial search retrieved a much larger universe of potentially responsive documents than was expected and was the basis of our initial production timeline. This much larger universe also requires greater involvement and coordination with our e-discovery division. Many of these documents are highly sensitive as well, necessitating a thorough review process to ensure City Defendants are complying with their obligations under the Family Educational Rights and Privacy Act ("FERPA"). City Defendants' obligation to comply with FERPA requires close attention to detail to ensure the statutorily-defined privacy of students records is not violated.

This Office has been working diligently to ensure that these documents are produced. Indeed, due to the time pressure, we have hired a managed review team of outside contractors for document

review to ensure they can be submitted to Plaintiffs as efficiently as possible without too great a risk of inadvertent disclosure.

If this requested extension is granted, City Defendants will consent to any reasonable additional time Plaintiffs seek for corresponding non-document discovery deadlines.

While Plaintiffs object to this request, it is respectfully submitted that any prejudice caused by the delayed production is outweighed by the need for a thorough and careful review of material that is often highly sensitive. There is no intent to delay production of these documents, and, indeed, we expect to produce the set of documents that both parties believe to be most responsive to Plaintiffs' claims in this matter shortly. These responsive documents are being reviewed and should be ready for production as soon as a confidentiality order and claw back agreement are in place.

To this point, City Defendants would like to move for a standard claw back order pursuant to Fed. R. Evid. 502(d) ("A Federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other Federal or State proceeding."). Plaintiffs do not consent to a separate order that will allow for retrieval of documents inadvertently produced and not otherwise discoverable. Many potentially responsive documents are privileged or attorney work product. A claw back agreement is necessary so that inadvertent disclosure will not prejudice City Defendants. *See BNP Paribas Mortg. Corp. v. Bank of Am., N.A.*, No. 9-cv-9783 (RWS), 2013 WL 2322678, at *9 (S.D.N.Y. May 21, 2013) (Rule 502(d)'s Statement of Congressional Intent "explains that '[502(d)] is designed to enable a court to enter an order that will allow the parties to conduct and respond to discovery expeditiously, without the need for exhaustive pre-production privilege reviews, while still preserving each party's right to assert the privilege to preclude use in litigation of information disclosed in such discovery.'"). Moreover, a claw back agreement will aid in efficient production because less levels of review will be required if there is a Court-approved remedy for inadvertent production. *See, e.g.*, *Capitol Records, Inc. v. MP3tunes, LLC*, 261 F.R.D. 44, 51 n.6 (S.D.N.Y. 2009) ("[I]f [Defendant] wishes to ensure that it is able to make a timely production despite the need to review its emails for privilege issues, it remains free to confer with the Plaintiffs with respect to a claw back agreement to be 'so ordered' by the Court."). City Defendants will submit further briefing of this issue at the Court's request or are willing to submit a proposed claw back Order for the Court's endorsement.

City Defendants thank the Court for considering these requesets.

Sincerely,

/s/ *Jordan Doll*
Jordan Doll
Assistant Corporation Counsel